IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

RP.No. 643 of 2007()

AGAINST THE JUDGEMENT IN FAO.146/2007 Dated 06/06/2007

.....

REVIEW PETITIONER/APPELLANT

KRISHNAN, S/O. KUNJAYYAPPAN,
KUNNILPARAMBIL VEETTIL, KOTTAPURAM KARA,
ADANGAD VILLAGE, PARAVUR TALUK.

BY ADV. SMT.SADHANA KUMARI ESWARI
SMT.GISA SUSAN THOMAS

RESPONDENTS: RESPONDENT

AZHAKI, D/O. CHATHAN,
KUNNILPARAMBIL, KOTTAPURAM KARA,
ALANGAD VILLAGE, PARAVUR TALUK.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

R.P.No. 643 OF 2007 IN
F.A.O. No. 146/2007

Dated this the 23rd July, 2007.

O R D E R

The appellant who is the plaintiff in O.S.No.18/1996, on the file of the Munsiff's Court, Paravur, has filed the review petition to review the judgment passed by this Court in F.A.O.No.146/2007. The appellant filed A.S.No.168/2000 before the Sub Court, North Paravur, against that part of the decree by which the relief for mandatory injunction was disallowed. During the pendency of the appeal, respondent in the appeal, filed a petition to permit her to thatch the building situated in the property. That prayer was opposed by the appellant contending that the building collapsed two years prior to the date of filing of the petition, and attempt of the respondent was to re-construct the building collapsed or put up a new structure at that site, on the guise of thatching the building. The appellate court allowed that application. Challenging that order, this F.A.O. was filed. I dismissed the F.A.O. observing that, in case, the respondent, on the guise of thatching the building, makes any attempt to renovate or re-construct the building, it is open to the appellant to move the lower

appellate court for appropriate orders. I have also directed the lower appellate court to dispose of the appeal, within one month from the date of receipt of the judgment.

2. In the review petition, the main ground raised by the appellant is regarding the strange procedure followed by the lower appellate court. It is submitted that the lower appellate court placed itself to the position of a Trial Court and referred the claim of Kudikidappu to the Land Tribunal, from the appeal itself, on the ground that there is a catena of decisions, which upholds the power of lower appellate court to make such a reference. Thereafter, the hearing of the appeal was stayed under Section 125(3) of the Kerala Land Reforms Act was stayed. In view of the directions issued by this Court, the lower appellate court is compelling the parties to argue the matter, though the entire records in the case, had already been forwarded to the Land Tribunal, for a decision and the records are not returned with the finding on the issue referred. If the lower appellate court dispose of the appeal, after referring the issue to the Land Tribunal, it will be committing a grave illegality. I fail to understand how the lower appellate court which is the final court in fact can hear and dispose of the appeal, without perusing the records. The proper course ought to have that the lower appellate court itself would have

addressed this Court explaining the circumstances and seeking for further time. To avoid further delay, I think some clarification is necessary in the final order passed in the F.A.O.

3. In the result, the Review Petition is disposed of making it clear that one month's time limit fixed in my final judgment will start only from the date of appearance, after receipt of the records from the Land Tribunal with its finding. In view of the fact that the matter is pending for more than one decade, there will be a direction to the Land Tribunal concerned, to expedite the trial of the issue and return the records with findings to the lower appellate court, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

Registry is directed to communicate a copy of this Order to the lower appellate court, as well as to the concerned Land Tribunal, for compliance.

K.PADMANABHAN NAIR,
JUDGE

nj.